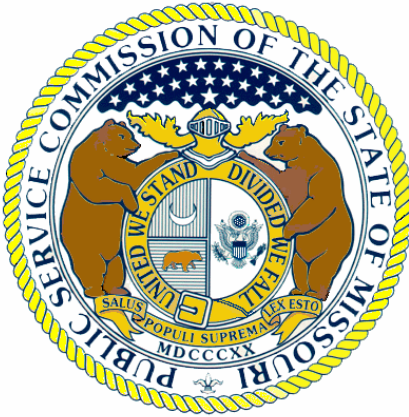


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



Jason Becker,
Becker Development Company,

Complainant,

v.

Aqua Missouri, Inc.,

Respondent.

Case No. SC-2007-0044 et al.

REPORT AND ORDER

Issue Date: July 12, 2007

Effective Date: August 11, 2007

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Jason Becker,)	
Becker Development Company,)	
)	
Complainant,)	
)	
v.)	<u>Case No. SC-2007-0044 et al.</u>
)	
Aqua Missouri, Inc.,)	
)	
Respondent.)	

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Appearances

Keith A. Wenzel, HENDREN ANDRAE, LLC, 221 Bolivar Street, Jefferson City, Missouri 65102, for Jason Becker and Becker Development, Inc.

Marc H. Ellinger, BLITZ, BARDGETT & DEUTSCH, L.C., 308 E. High Street, Suite 301 Jefferson City, Missouri 65101, for Aqua Missouri, Inc.

Christina Baker, Assistant Public Counsel, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel.

Kevin A. Thompson, General Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: **Morris L. Woodruff, Deputy Chief Regulatory Law Judge**

REPORT AND ORDER

Syllabus: After considering Jason Becker and Becker Development Company's complaint against Aqua Missouri, Inc., the Commission finds that Aqua Missouri must allow ten additional houses to be connected to its existing sewer system at Lake Carmel. If Becker wishes to build additional houses that would require an expansion of the existing sewer system, it must enter into a developer agreement with Aqua Missouri as required by the company's tariff.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider

relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

On August 7, 2006, Jason Becker and Becker Development Company (Becker) filed two complaints against Aqua Missouri, Inc. The complaints, assigned Case Numbers SC-2007-0044 and SC-2007-0045, allege that Aqua Missouri has refused to provide water and sewer utility service to multiple lots that Becker owns in the Lake Carmel subdivision served by Aqua Missouri. By a notice issued on August 8, pursuant to Commission Rule 4 CSR 240-2.070(7), the Commission served a copy of both complaints on Aqua Missouri. Aqua Missouri timely responded to both complaints by filing their answers on September 7. The two complaints were subsequently consolidated into Case Number SC-2007-0044.

The Commission established a procedural schedule requiring the parties to prefile written direct, rebuttal, and surrebuttal testimony. An evidentiary hearing was held on April 23, 2007. Post-Hearing briefs were submitted on May 31.

The Development at Lake Carmel

Aqua Missouri currently holds a certificate of convenience and necessity from this Commission and provides regulated water and sewer service to approximately 46 homes at Lake Carmel, a housing development located in rural Cole County, Missouri. An additional three homes receive only water service.¹ The sewer treatment facility serving Lake Carmel was originally built by the developer of the subdivision and in 1973 was contributed to a regulated sewer utility known as Lake Carmel Development Co., Inc.² In 1998, that

¹ Transcript, Page 139, Lines 22-24.

² Memorandum, Commission Case No. WM-98-130. The memorandum is attached to the testimony of Hale-Rush Rebuttal, Ex. 4.

company sold the sewer system to Capital Utilities, Inc. Capital Utilities subsequently became AquaSource/CU, Inc., which was in turn purchased by Aqua America, Inc., effective August 1, 2003, to do business as Aqua Missouri, Inc.³

Becker Development Company, LLC, of which the other complainant, Jason Becker, is a principal, purchased the undeveloped portion of the Lake Carmel development in 1998.⁴ Becker owns a total of 65 lots in the development.⁵ Beginning in 2003, Becker demanded that Aqua Missouri extend water and sewer service to the previously unplatted portion of the Lake Carmel subdivision. That extension would serve an additional 47 homes.⁶ Aqua Missouri agreed to the extension of its water and sewer system to serve the new homes, but would do so only if Becker signed a Developer Agreement, by which Becker would be required to pay for the expansion of the system, including an expansion of the capacity of the sewer treatment facility.⁷ Becker contends that Aqua Missouri, not the developer, should be required to pay for expansion of the existing sewer treatment facility and has refused to sign a developer agreement that would require the developer to pay for such expansion.

In addition to the proposal to plat a new development area, Becker currently owns 13 lots at Lake Carmel that are ready to build, except for the lack of available sewer service.⁸ Aqua Missouri has refused to provide service to Becker's building lots, contending that its sewer treatment plant is already above its allowed capacity. Until this

³ Hale-Rush Rebuttal, Ex. 4, Page 2, Lines 9-11.

⁴ Becker Direct, Ex. 6, paragraph 2.

⁵ Transcript, Page 9, Lines 22-24.

⁶ Id. at paragraph 10.

⁷ Hale-Rush Rebuttal, Ex. 4, Page 4, Lines 3-11.

dispute is resolved, Becker will be unable to build houses on the lots that he owns at Lake Carmel.

The Sewage Treatment Facility at Lake Carmel

The existing sewage treatment facility at Lake Carmel includes a gravity-fed collection system emptying into a three-cell lagoon. In other words, the wastewater flows through collecting mains by force of gravity and is collected in a series of three ponds. While the wastewater is retained in the ponds it is treated through natural biological action.⁹ Eventually, the treated water flows through each of the three treatment cells and is discharged into a creek.¹⁰

The sewage treatment plant at Lake Carmel operates with a current permit from the Missouri Department of Natural Resources (DNR). The operating permit indicates that the sewage lagoons are designed to handle a flow of 12,600 gallons of wastewater per day. Using a DNR standard of 100 gallons per person, per day, the operating permit is based on an assumed population of 126 persons served by the plant. Assuming 3.7 persons per household, the operating permit is based on the assumption that 34 houses can be served by the existing lagoons.¹¹

The Service Provided by the Lake Carmel Sewer System

Aqua-Missouri currently uses the sewage lagoons to provide service to 46 houses in the Lake Carmel subdivision. Again, assuming 3.7 persons per household, producing 100 gallons of wastewater per day, current usage would produce an expected total flow of

⁸ Transcript, Page 15, Lines 20-22.

⁹ Transcript, Page 52, Lines 18-24.

¹⁰ Transcript, Page 53, Lines 8-19.

¹¹ Gaebe Direct, Ex. 2, Attachment ROG-2.

17,020 gallons per day into the lagoon system.¹² By that measure, the sewage lagoons are already substantially over their designed capacity.

However, measurement of the amount of water Aqua Missouri sold to the residences in the Lake Carmel subdivision indicates an average water usage of only 170 gallons per house, per day.¹³ That means that either the average population in those homes is less than the assumed 3.7 residents, or those residents use less than the assumed 100 gallons of water per day. Since the amount of wastewater flowing out of a house, should not be more than the amount of fresh water flowing in, the amount of wastewater flowing into the sewage lagoons should be approximately 7,820 gallons per day,¹⁴ which is below designed capacity.

Aqua Missouri has, on occasion, actually measured the amount of water flowing into the sewage lagoons. For March 22 through 29, 2006, a wet period, the average daily flow was measured at 29,904 gallons per day, varying from a maximum of 49,999 gallons to a minimum of 10,077 gallons. For June 8 through 19, 2006, a dry period, the average daily flow was measured at 17,836 gallons per day, varying from a maximum of 39,113 gallons to a minimum of 9,941 gallons.¹⁵

Those numbers indicate that Aqua Missouri's sewer system at Lake Carmel has an inflow and infiltration problem. In other words, outside water is entering the wastewater system and draining into the sewage lagoons. Inflow and infiltration can occur when rainfall enters the system through manholes, or it can result from ground water leaking into the

¹² 46 houses x 3.7 persons per house x 100 gallons per person = 17,020 gallons per day.

¹³ Wells Surrebuttal, Ex. 8, Page 2.

¹⁴ 46 houses x 170 gallons per day = 7,820 gallons per day.

¹⁵ Gaebe Direct, Ex. 2, Attachment ROG-2.

sewer mains. For this system a possible source of such ground water is leakage from the lake that gives the Lake Carmel subdivision its name. Aqua Missouri has taken steps to reduce the amount of inflow and infiltration into its system by repairing manholes, but at the time of the hearing, was still looking at possible solutions to further address the problem.¹⁶

The effect of the inflow and infiltration problem on the Lake Carmel sewage lagoons is mixed. The increased amount of water flowing into the lagoons causes the water to flow through the lagoons more quickly, reducing the amount of time water is retained in the lagoons. Since the water flows through the lagoons more quickly, less time is available to allow natural biological action to clean the water.¹⁷ On the other hand, the clean water flowing into the system tends to dilute the wastewater. As a result, the water flowing out of the lagoons is cleaner than it would otherwise be.¹⁸ So, despite the increased flows, the water flowing out of the lagoons, which is monitored by DNR, has met pollution control standards and has not caused DNR to issue any notices of violation to Aqua Missouri.¹⁹

Inflow and infiltration is not the only problem affecting the Lake Carmel sewage lagoons. The lagoons are designed to retain some solid waste as sludge, which accumulates at the bottom of the ponds. Over the 35 years that the lagoons have been operating, several feet of sludge have accumulated, reducing the volume of wastewater that can be retained in the lagoons.²⁰ Because of the buildup of sludge, the lagoons are

¹⁶ Transcript, Pages 146-147, Lines 16-25, 1-4.

¹⁷ Transcript, Page 116, Lines 8-14.

¹⁸ Transcript, Page 36, Lines 11-21.

¹⁹ Transcript, Page 56, Lines 13-16.

²⁰ Transcript, Pages 131-132, Lines 19-25, 1-3.

now able to treat only about three-quarters of its designed wastewater flow capacity.²¹ Eventually, even if no more houses are added to the system, the lagoons will fill with sludge and will need to be upgraded or replaced.²²

Two possible solutions were offered to increase the flow capacity of the lagoons to restore the sewage treatment facility to its designed capacity. One solution would be to simply use earth moving equipment to raise the berms surrounding the lagoons by about 18 inches, thereby increasing the depth of the lagoons and increasing their capacity.²³ Thomas Wells, the consulting engineer engaged by Becker, who offered this solution, testified that he had not calculated the cost required to raise the berms.²⁴ The other solution would be to dredge the lagoons to remove the accumulated sludge and restore their original depth and capacity. Wells also did not calculate the cost to dredge the lagoons.²⁵ However, Tena Hale-Rush, Regional Manager for Aqua Missouri, testified that the cost of dredging a similar lagoon would exceed \$100,000.²⁶

Even if the inflow and infiltration problem is corrected and the lagoons are restored to their designed capacity, the sewage treatment facility serving Lake Carmel is still at or near its capacity. Thomas Wells, Becker's expert, testified that raising the berms to restore full capacity for the lagoons would allow perhaps four additional houses to be connected to the system.²⁷ To connect any additional houses would require a "significant upgrade of

²¹ Transcript, Pages 32-33, Lines 23-25, 1-5.

²² Transcript, Pages 135-136, Lines 22-25, 1.

²³ Wells Surrebuttal, Lake Carmel Lagoon Volume Confirmation, Transcript, Pages 27-28, Lines 21-25, 1-2.

²⁴ Transcript, Page 28, Lines 12-17.

²⁵ Transcript, Page 40, Lines 7-11.

²⁶ Transcript, Page 148, Lines 10-20.

²⁷ Transcript, Page 27, Lines 11-20.

capacity”²⁸ Similarly, Robert Gaebe, the civil engineer who testified for Aqua Missouri, indicated that even if the entire inflow and infiltration problem were corrected, at most an additional 10 to 12 houses could be connected to the current system without a major upgrade to the system.²⁹

Staff’s witness, James Merciel, who is also a civil engineer, testified that there are three primary options available for making a major upgrade to the current sewer system.

Those options are:

- 1) expand or modify the existing treatment facility, such as by adding a fourth lagoon cell, or adding mechanical equipment such as surface aerators, mechanical aeration units or clarifier units;
- 2) construct a ‘parallel’ treatment facility that would operate in addition to, but separate from, the existing facility; or
- 3) abandon the existing treatment facility and construct a replacement facility with sufficient capacity to serve existing customers as well as a reasonable level of future customers.³⁰

Neither Becker nor Aqua Missouri disagree with Merciel’s description of the available options. However, they do not agree upon any particular solution.

While Aqua Missouri has refused to allow Becker to connect any further houses to the sewer system because of the alleged lack of capacity, it has not prevented other individual homeowners, who are not associated with a developer, from connecting their homes to the sewer system. In the past year, Aqua Missouri has granted two such individual homeowners access to connect their houses to the sewer system.³¹ In fact, Aqua Missouri has never denied an individual homeowner access to the Lake Carmel

²⁸ Transcript, Page 30, Lines 20-23.

²⁹ Transcript, Page 129, Lines 7-15.

³⁰ Merciel Rebuttal, Ex. 1, Page 5, Lines 6-12.

³¹ Transcript, Page 143, Lines 12-21.

sewer system.³²

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law:

1. Aqua Missouri is a “Public Utility” and a “Sewer Corporation”, as those terms are defined at Section 386.020 (42) and (48), RSMo Supp. 2006. As such it is subject to regulation by this Commission.

2. Section 393.140(1), RSMo 2000 gives the Commission general power to investigate the quality of sewer service furnished by a sewer corporation and to order such reasonable improvements “as will best promote the public interest, preserve the public health and protect those using such ... sewer system”.

3. Section 393.130.1, RSMo Supp. 2006 requires every sewer corporation to “furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.”

4. Section 393.130.3, RSMo Supp. 2006 states:

No ... sewer corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

5. Section 386.390.1, RSMo 2000 gives the Commission authority to hear a complaint alleging “any act or thing done or omitted to be done” by any public utility “in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission.”

³² Transcript, Page 144, Lines 1-7.

6. As the party bringing a complaint, Becker has the burden of proving its allegations.³³

7. Aqua Missouri holds a certificate of convenience and necessity to provide sewer service in the Lake Carmel area. Missouri's courts have established as a general principle that "[t]he certificate of convenience and necessity issued to the utility is a mandate to serve the area covered and it is the utility's duty, within reasonable limitations, to serve all persons in an area it has undertaken to serve."³⁴

8. A utility tariff that has been approved by the Commission becomes Missouri law, and has "the same force and effect as a statute directly prescribed from the legislature".³⁵ In interpreting a tariff, the Commission is required to "ascertain the intent of [the utility and the Commission] from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning."³⁶

9. Rule 12(b) of Aqua Missouri's applicable, approved, tariff states:

This Rule shall govern the construction of new treatment facilities and/or extension of new collecting sewers requested by a Developer in areas within the Company's certificated service area where the company currently does not serve.³⁷

This is the section of Aqua Missouri's tariff that sets out the procedures to be followed by developers in requesting sewer service for a newly developed area.

10. Rule 12(b)(1) of the same tariff states:

³³ *State ex rel GS Technologies Operating Co., Inc. v. Pub. Serv. Comm'n*, 116 S.W.3d 680 (Mo. App. W.D. 2003).

³⁴ *State ex rel Missouri Power and Light Co. v. Pub. Serv. Comm'n*, 669 S.W. 2d 941, 946 (Mo. App. W.D. 1984).

³⁵ *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n*, 156 S.W. 3d 513, 521, (Mo. App. W.D. 2005).

³⁶ *Id.*

³⁷ P.S.C. Mo. No. 2, Original Sheet No. SRR 43. A copy of this section of the tariff was admitted into

A Developer shall enter into a contract (See Exhibit B) with the Company. The contract shall provide that the Developer may construct said collecting sewers to meet the requirements of all governmental agencies and the Company's Rules and Regulations, including the Company's Technical Specifications. The Developer shall contribute said sewer collection/treatment system to the Company with a detailed accounting of the actual cost of construction (excluding income taxes).

The "Exhibit B" referenced in this section of the tariff is a sample of an extension agreement that is also set out in Aqua Missouri's tariff.³⁸ Becker has refused to sign such an extension agreement and Aqua Missouri has refused to provide service to Becker's houses until such agreement is signed.

11. Rule 12(b)(1) and the accompanying extension agreement require a developer, such as Becker, to either construct, or at least pay for, any new collecting sewer mains and treatment facilities needed to serve the newly developed area. After the collecting mains and treatment facilities are built, the developer is required to "contribute" the mains and treatment facilities to the utility, which will then operate the sewer system.

12. Aqua Missouri's tariff does not require Becker, or any other developer, to pay extra to maintain existing sewer treatment facilities. Nor does it require a developer to pay extra to hook up additional homes that can be served by existing sewer treatment facilities. Those costs are to be recovered through the rates the utility charges all its customers.

DECISION

The Commission has reached the following decisions regarding the issues described by the parties in the List of Issues filed before the start of the hearing.

evidence as Exhibit 10.

³⁸ P.S.C. Mo. No. 2, Original Sheet Nos. SE 6-10. A copy of this section of the tariff was admitted into evidence as Exhibit 9.

I. Service to Becker

a) Has Aqua Missouri violated its obligation as a public utility by refusing to serve Becker despite repeated requests?

As a public utility, Aqua Missouri has a general mandate, within reasonable limits, to provide service to members of the public within its designated service area. Aqua Missouri's tariff imposes additional requirements on developers whose development plans will require the construction of new treatment facilities or the extension of new collecting sewers. Essentially, a developer is required to pay for the extension of sewers needed to serve the new development as well as for any new treatment facilities needed to serve the new development.

The additional requirements that Aqua Missouri's tariff imposes are reasonable. The developer, and ultimately the buyer of the developed property, should be responsible for the cost of constructing the sewer facilities needed to serve that property. If the developer and the developer's customers are not held responsible for paying those costs, the costs of serving the newly developed property would be unfairly imposed, through higher rates, upon the homeowners currently served by the existing sewer system, while the developer collects the extra profits.

Staff argues that Aqua Missouri's tariff requires a developer to pay only for *new* treatment facilities, while requiring the utility, and ultimately its existing customers, to pay unlimited amounts for expansion of existing treatment facilities needed to serve new developments. Staff's reading of the tariff is unreasonably narrow, and would unfairly impose development costs on existing customer of the utility. In the context of this case, Staff's interpretation would require Aqua Missouri and its existing customers to fully bear

the cost of doubling the capacity of the existing sewer treatment facilities to serve Becker's new development, so long as the expanded facilities cannot be called a *new* facility. However, the distinction that Staff would draw between a *new* facility and the expansion of an existing facility would be difficult to discern and is essentially meaningless. For example, if Aqua Missouri digs a fourth lagoon cell, is that a *new* facility or an expansion of the existing facility? That distinction should not be the basis for assigning hundreds of thousands of dollars in costs. Rather, the important principle is that a cost causer should be required to pay for the costs caused. Whether providing sewer service to a new development requires a new treatment facility, or a new expansion of an existing facility, it is the responsibility of the developer to pay for the costs of providing that service. Therefore, the Commission finds that in Aqua Missouri's tariff, *new* treatment facilities means any additional treatment facilities required to serve the new development.

That explanation of Aqua Missouri's tariff, does not, however, mean that Aqua Missouri is justified in refusing to provide service to any houses built by Becker. The evidence indicates that Aqua Missouri currently has some available capacity on the Lake Carmel sewer system. The utility has continued to allow individual home builders to hook up to its sewer system; two new homes have been promised connection in the past year. While Aqua Missouri's tariff requires Becker to pay for new treatment capacity, there is nothing in its tariff that would allow Aqua Missouri to discriminate against Becker in the allocation of its existing sewage treatment capacity. To the extent that it has available treatment capacity, Aqua Missouri must make that capacity available to Becker on the same terms that it makes that capacity available to any other potential customer.

The question then becomes: how much sewage treatment capacity does Aqua

Missouri have available? The answer to that question is not clear from the record, and unfortunately, it seems likely that no one, including Aqua Missouri, really knows. That is unfortunate because as a public utility, Aqua Missouri has an obligation to know the capacity of its system and to know how many customers it can serve without violating pollution control regulations.

It is apparent that, as they are currently operating, the sewage treatment lagoons at Lake Carmel are at or near their capacity. It is also apparent that the lagoons are currently operating at less than their designed and permitted capacity because of an inflow and infiltration problem, as well as the natural buildup of sludge during the life of the lagoons. Aqua Missouri must maintain and operate its sewer system in a way that will provide safe and adequate service to its customers. It cannot pass those costs on to a developer or other customer, except through Commission approved rates. Therefore, Aqua Missouri must pay for whatever maintenance or repairs are reasonably necessary to keep its sewer system operating at its designed capacity. In this case, that means paying the cost of fixing the inflow and infiltration problem and taking appropriate action to restore the wastewater storage capacity of the lagoons to their designed capacity, either by raising the level of the surrounding berms, or dredging and removing the accumulated sludge.

Becker's expert testified that restoring the capacity of the lagoons would allow four additional houses to be connected to the sewer system. Aqua Missouri's expert testified that at most ten to twelve additional houses could be served if the inflow and infiltration problem were entirely solved. Becker and other potential customer are entitled to connect new houses to the system up to the capacity of the current system. Since the evidence indicates that some new houses can be served if the existing sewer system is properly

maintained and repaired, and since Aqua Missouri is unaware of the capacity of its system, the Commission will need to make a determination of how many new houses can be added to the system. Based on the evidence presented to it, the Commission's best estimate is that ten new houses can be connected to the system. Aqua Missouri will be ordered to connect up to ten new houses to the existing sewer system. Those ten new houses are to be allocated on a first-come, first-served basis, with Becker to be treated on the same basis as any other potential customer.

b) Has Aqua Missouri violated its tariff by refusing to provide service to Becker unless Becker enters into a Developer Agreement with Aqua Missouri?

As indicated in the previous discussion, Aqua Missouri's tariffs do not allow the utility to refuse to provide service to any customer, including a developer, so long as that customer can be served using existing capacity. Becker does not need to enter into a developer agreement to utilize that existing capacity. However, Aqua Missouri's tariff does require Becker, or any other developer, to enter into a developer agreement in order to develop additional property that will require the creation of additional sewer capacity, either through the building of new treatment facilities or the expansion of current facilities.

c) What steps, if any, must Becker take to receive service from Aqua Missouri?

Becker has done everything necessary to receive service for the ten additional houses that the Commission has determined can be served through the current capacity of the sewer system.

d) If an expansion of Aqua Missouri's wastewater treatment plant is necessary in order for Aqua Missouri to serve Becker, who is responsible for the cost of

expansion?

As previously indicated any expansion of the wastewater treatment plant necessary to serve new development is the responsibility of the developer who proposes to build the development that necessitates the expansion. If Becker plans to develop its property in that manner, it must sign a developer agreement and agree to pay for the cost of expansion.

II. Safe and Adequate Service at Lake Carmel

a) Is Aqua Missouri presently providing safe and adequate service to its customers at Lake Carmel?

There was no evidence presented that would indicate that Aqua Missouri is not providing safe and adequate service to its current customers. There have been no DNR violations and current sewer customers are well served. With appropriate maintenance and repair of its sewer system to restore that system to its permitted capacity, Aqua Missouri should be able to provide safe and adequate service to ten additional customers.

b) Is the wastewater treatment facility at Lake Carmel presently at or over its permitted capacity?

The wastewater treatment lagoons at Lake Carmel are at or near their current operating capacity. However, with appropriate maintenance and repair of its sewer system to restore that system to its permitted capacity, Aqua Missouri should be able to provide safe and adequate service to ten additional customers.

c) If the wastewater treatment facility at Lake Carmel is not at or over its permitted capacity, how many additional homes or lots may be connected?

Ten additional lots may be connected.

d) If the wastewater treatment facility at Lake Carmel is presently over its permitted capacity, must Aqua Missouri make improvements to its facility to add capacity sufficient to meet its present load?

Aqua Missouri must appropriately maintain and repair its sewer system to restore that system to its permitted capacity.

III. Aqua Missouri's Tariff

Does the public interest or the law require that Aqua Missouri amend or modify its tariff so that individuals and developers will be treated similarly with respect to extensions?

As interpreted by the Commission, Aqua Missouri's tariff is reasonable and is consistent with Missouri law and the regulations of this Commission. It does not need to be changed.

IT IS ORDERED THAT:

1. Aqua Missouri, Inc. shall connect up to ten additional houses to its sewer system at the Lake Carmel subdivision. Applications to connect additional houses shall be granted on a first-come, first-served basis, with Jason Becker and Becker Development Company treated the same as all other applicants.

2. If Jason Becker and Becker Development Company wish to develop additional land and thereby require an expansion of the sewer system, Jason Becker and Becker Development Company must sign a developer agreement as required by Aqua Missouri's tariff.

3. This Report and Order shall become effective on August 11, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Clayton and Appling, CC., concur;
Murray and Gaw, CC., dissent;
and certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 12th day of July, 2007.